

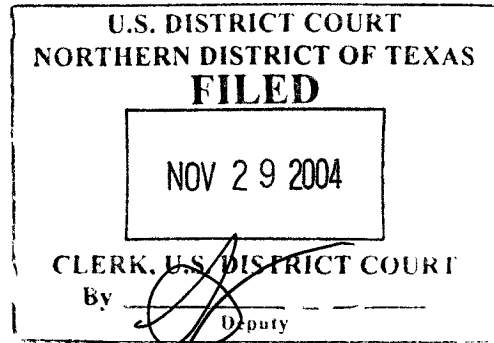
County/State: USDC

Case No: 304CV888M

Court #:

RETURN OF SERVICE

[Signature]
 JOHNNIE MERRILL AND KIMBERLY MERRILL
 VS
 WAFFLE HOUSE, INC.



CAME TO HAND ON: 11/12/2004 at 3:26:48 PM
 BY DELIVERING TO: YORDY, AMANDA , ,
 ADDRESS DELIVERED: 7500 MAPLEWOOD AVE #133, NORTH RICHLAND HILLS, TX, 76180-
 DATE EXECUTED: 11/15/2004 at 04:20PM
 MODE OF DELIVERY: PERSONALLY DELIVERING TO THE PERSON ABOVE
 DOCUMENT DELIVERED: FEDERAL SUBPOENA

A true and correct copy of the above listed documents were delivered having first endorsed on such copy the date of delivery.

I am over the age of eighteen, not a party to nor interested in the outcome of the above numbered suit and am authorized by written order of the court to serve citation and other notices

Service Fee: 105.00Witness Fee: 40.-

[Signature]

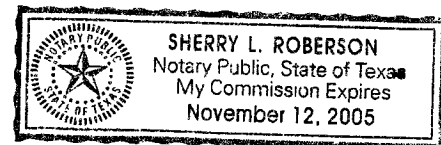
Gary L. Thornton
 Professional Civil Process
 340 Blue Mound Rd., Ste. 344
 Fort Worth, Texas 76131

VERIFICATION

State of Texas

Before me, a notary public, on this day personally appeared the above named authorized person known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are true and correct. Given my hand and seal of office on this 17 day of Nov, 2004.

[Signature]
 NOTARY PUBLIC FOR THE STATE OF TEXAS



Issued by the

United States District CourtNORTHERNDISTRICT OF TEXAS, DALLAS DIVISION

JOHNNIE MERRILL and KIMBERLY MERRILL

SUBPOENA IN A CIVIL CASE

V.

CASE NUMBER:¹ 3:04-CV-888-M

WAFFLE HOUSE, INC.

TO: Amanda Yordy
7500 Maplewood Ave. #133
North Richland Hills, TX 76180

or

7121 Lindentree Lane
Fort Worth, TX 76137DELIVERED BY _____
DATE _____☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify at the trial in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

Vinson & Elkins L.L.P.
2001 Ross Avenue
Suite 3700
Dallas, Texas 75201

DATE AND TIME

12/01/2004
1:00 P.M.☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE

DATE AND TIME

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

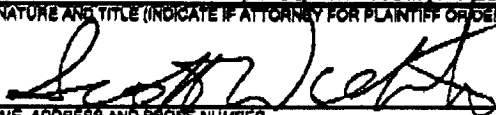
PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. FEDERAL RULES OF CIVIL PROCEDURE, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE



Attorney for Plaintiff

11/12/04

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Scott Wiehle
Vinson & Elkins L.L.P.
2001 Ross Avenue, Suite 3700
Dallas, TX 75201 214-220-7700

(See Rule 45, FEDERAL RULES OF CIVIL PROCEDURE, Parts C & D on Reverse)

¹ If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, FEDERAL RULES OF CIVIL PROCEDURE, Parts C & D:
(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that,

subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.